

REMARKS

This Application has been carefully reviewed in light of the Final Action dated August 13, 2004. In order to advance prosecution of the present Application, Claims 1 and 22 Have been amended and Claims 23-29 have been added. Applicant respectfully requests reconsideration and favorable action for this Application.

The Examiner issued a Final Action on August 13, 2004. Applicant submitted a Response to Examiner's Final Action on October 11, 2004. The Examiner issued an Advisory Action on November 15, 2004 stating that the Response to Examiner's Final Action would not be entered because it raised new issues requiring further searching and consideration. Applicant respectfully requests that the Response to Examiner's Final Action be entered and considered by the Examiner pursuant to this Request for Continued Examination. For the convenience of the Examiner, the amendments made to the claims in the Response to Examiner's Final Action and the accompanying comments are repeated herein as well as the presentation of new claims.

Claims 1-3, 5, and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Caccavale, et al. Independent Claims 1 and 22 recite in general predicted responsiveness indicators being operative to predict a response time of each of the plurality of servers based at least in part on response time data and aging of the response time data gathered at the system in the course of monitoring connections established between the plurality of servers and clients on the external network. By contrast, the Examiner readily admits that the Brendel, et al. patent fails to disclose the use of predicted responsiveness indicators to predict server response time. To support the claimed

predicted responsiveness indicators and prediction of server response time, the Examiner cites the Caccavale, et al. patent in combination with the Brendel, et al. patent. However, the Caccavale, et al. patent merely discloses sending out probes and identifying the length of time it takes a server to respond to the probe. The Caccavale, et al. patent does not disclose the use of any aging factor associated with its measured server length of response time. Thus, the Caccavale, et al. patent does not take into account an aging factor of response time data as provided by the claimed invention. Support for the above recitation can be found at page 27, line 24, to page 28, line 8, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1-3, 5, and 22 are patentably distinct from the proposed Brendel, et al. - Caccavale, et al. combination.

Attached herewith is a check in an amount of \$790.00 made payable to the "Commissioner of Patents and Trademarks" to satisfy the request for continued examination fee of 37 C.F.R. §1.17(e).

Applicant respectfully requests a one month extension of time for filing this Request for Continued Examination. Attached herewith is a Notification of Extension of Time with check in support thereof.

CONCLUSION

Applicant has now made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

The Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over the typed name.

Charles S. Fish

Reg. No. 35,870

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